IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 629 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BALWANTSINH ADESINH BARIA

Versus

STATE OF GUJARAT

Appearance:
Criminal Appeal No. 629 of 1992
MR BS SUPEHIA for Petitioner
MR.K.C. SHAH Learned A.P.P. for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE D.P.BUCH

Date of decision: 29/03/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

1. The appellant has challenged his conviction under Sections 302 and 504 of the Indian Penal Code as well as sentence of life imprisonment recorded by the learned Sessions Judge Panchmahals at Godhra in Sessions case No.121/91 vide judgment dated June 8, 1992, in the present appeal which is filed under Section 374 (2) of the Code of Criminal Procedure.

2. The incident in question is alleged to have taken place on April 2, 1991, at village Chalali, Taluka Sahera, District Panchmahals. Complainant Ratansing Adesing Baria was residing at village Chalali, alongwith his deceased brother Chandrasing, his father Adesing and the appellant who is his real brother. The house in which the complainant and others were residing was partitioned and front portion of the house had gone to the share of the complainant and his brother; whereas rear portion of the house had gone to the share of the appellant and Adesing who is father of the complainant. It may be stated that the complainant was serving as truck driver at Baroda, but as he was suffering from T.B. and had become infirm, he had left the job and was residing at village Chalali. The complainant had become so infirm that he was not able to walk without support of a stick. Deceased Chandrasing was also earlier serving as a truck driver at Baroda, but on termination of his service he had started residing at village Chalali. At village Chalali, the deceased was doing the work of breaking stones. On the date of incident after breaking stones, the deceased had returned home, whereas the father of the complainant after taking supper was preparing for going to bed. At about 9.00 p.m. the deceased and complainant while taking lunch were inter se talking about mending of roofing tiles and calling persons for the said purpose. This talk was over-heard by their father Adesing who objected to the mending of roofing tiles saying that the complainant and deceased were not entitled to reside in the house. After objecting to mending of roofing tiles, father Adesing had pulled the complainant and the complainant who was infirm had fallen down on the ground. Thereupon, the deceased had scolded his father and told his father not to pick up quarrel with the complainant who was infirm. According to the prosecution, meanwhile the appellant had come and started fight with the deceased. Those who were residing nearby had collected and persuaded the deceased as well as appellant not to quarrel. Thereafter the deceased had gone towards the village pond for the purpose of sleeping, but the appellant had followed him with a spear and after abusing the deceased filthily had given a spear

blow near private part of the body of the deceased. This was witnessed by complainant, but as complainant was infirm and weak, he could not do anything in the matter as he was not able to walk at all. The prosecution has claimed that on receipt of the injury the deceased had tried to run away in order to save himself from further injury, but ultimately, he fell down injured in irrigated land of one Bharatsing R. Baria. In the morning the complainant had learnt from Bharatsing Baria that deceased was lying dead in his irrigated land and therefore the complainant had called police Patel as well as Sarpanch of the village and informed them about the incident. Thereafter the complainant in the company of police Patel and Sarpanch of the village had gone to Sahera Police Station for the purpose of lodging the complaint. The complaint of complainant Ratansing was recorded by Rameshchandra Keshavlal who was then discharging duties as Sub Inspector of the Police Station. The complaint was investigated and at the conclusion of the investigation, the appellant was chargesheeted for the offence punishable under Sections 302 and 504 of the Indian Penal Code. As the offence punishable under Section 302 of the Indian Penal Code is exclusively triable by Court of Sessions, the case was committed to Sessions Court Panchmahals at Godhra for trial where it was numbered as Sessions Case No.21/91. The learned Sessions Judge had framed charge against the appellant for the offences punishable under Sections 302 and 504 of Indian Penal Code. The charge was read over and explained to the appellant who pleaded not guilty to the same and claimed to be tried. The prosecution therefore, examined; (1) Ratansing A. Baria as P.W.1 at Exh.10, (2) Shardaben Narvabhai as P.W.2 at Exh.12, (3) Bharatsing Abhesing as P.W.3 at Exh.15, (4) Kanaksing Bapulal Baria as P.W.4 at Exh.16, (5) Dr.S.B. Shah as P.W.5 at Exh.19, (6) Rameshchandra Keshavlal as P.W.6 at Exh.25 and (7) Nanabhai Manabhai as P.W.7 at Exh.27 and also produced documentary evidence such as complaint filed by complainant Ratansing, discovery panchnama relating to blood stained spear and blood stained banian at the instance of the appellant, postmortem notes etc., to prove its case against the appellant. After recording of evidence of prosecution witness was over, the learned Judge recorded the statement of the appellant under Section 313 of the Indian Penal Code. In his further statement, the appellant denied case of the prosecution, but did not examine any witness in support of his defence.

3. On appreciation of the evidence adduced by the prosecution, the learned Judge deduced that evidence of

complainant Ratansing Baria was reliable as well as trustworthy and was corroborated by contemporary document namely complaint lodged by him. The learned Judge noticed that Sardaben Narvabhai had not supported prosecution case but as she was contradicted with her previous statement recorded by investigating agency, her evidence was of no assistance to the appellant. The learned Judge referred to and relied upon the evidence of panch witness Kanaksing Baria regarding discovery of spear and blood stained banian of the appellant at the instance of the appellant and held that as those articles had the same blood group as that of deceased, it was a circumstance against the appellant and as no explanation was offered by the appellant as to how his banina and the spear found at his instance had the same blood group as that of the deceased, the appellant was in close proximity of the deceased when he was fatally wounded. The learned Judge relied upon the evidence of Dr.S.B. Shah, for holding that the deceased had died a homicidal death and the injury sustained by the deceased was sufficient in the ordinary course of nature to cause his death. In view of the above referred to conclusions, the learned Judge has convicted the appellant under Sections 302 and 504 of the Indian Penal Code and sentenced him to life imprisonment by judgment dated June 8, 1992, giving rise to the present appeal.

4. Mr.S.B. Supehia, learned counsel for the appellant after taking us through the entire evidence on record submitted that according to prosecution, the incident had taken place at about 11.30 p.m. on April 2, 1991, whereas the complainant had lodged First Information Report on April 3, 1991 at about 11.30 in the morning and as there is delay in lodging complaint which is not explained by the prosecution at all, the appeal should be accepted. The learned counsel referred to the evidence of complainant Ratansing Baria and claimed that as he had animosity with the appellant, he had falsely implicated the appellant in a serious offence and his version of the incident should not have been accepted by the learned Judge. What was claimed was that the conduct of complainant Ratansing Baria was most unnatural and as he had no opportunity to witness the incident, the conviction of the appellant under Section 302 of the Indian Penal Code deserves to be setaside. The learned counsel for the appellant further emphasized that prosecution has not explained as to how blood stains were found on the back of the banian which was allegedly put on by the appellant at the time of incident, and therefore, report of the serologist indicating that spear and banian discovered at the instance of the appellant

had the same blood group as that of the deceased should be disbelieved. In the alternative, the learned counsel submitted that the appellant had given only one blow and as the case would fall under Part-II of Section 304 or at best under Part-I of Section 304 of Indian Penal Code, the appeal should be allowed and sentence imposed should be suitably reduced.

5. Mr.K.C. Shah, learned A.P.P. submitted that complainant Ratansing Baria had no earthly reason to involve the appellant falsely in serious case of murder and as` he has narrated the incident in a straightforward manner, his evidence is rightly acted upon by the learned Judge for the purpose of convicting the appellant under Section 302 of Indian Penal Code. The learned counsel for the State maintained that the deceased as well as appellant were real brothers of the complainant and the complainant being real brother of the deceased would not allow the real culprit to go scot free or involve his real brother falsely in such a serious case and therefore his evidence is worthy of acceptance. The learned counsel referred to the panchnama of place of incident and submitted that the contents of the panchnama completely corroborate the testimony of eye witness Ratansing and offers a guarantee that the testimony of complainant is truthful and trustworthy. The learned counsel also pleaded that the testimony of complainant stands corroborated in material particulars by his complaint and therefore no error can be said to have been committed by the learned Judge in placing reliance on the sole testimony of the complainant. After referring to the report of the serologist, the learned counsel stressed that find of same blood group as that of the deceased on spear and banian of the appellant at his instance proves that the appellant was in close proximity of the deceased when he was fatally wounded and therefore the view taken by the learned Judge on overall appreciation of the evidence to the effect that the appellant had committed murder of the deceased being just should not be disturbed in the present appeal. In order to meet alternative argument advanced by the learned counsel for the appellant the learned A.P.P. pointed out that the appellant had used deadly weapon and inflicted blow on the vital part of the body of the deceased, as a result of which the deceased died, and therefore, his conviction under Section 302 of the Indian Penal Code is perfectly justified.

6. We have heard the learned counsel for the parties and taken into consideration the evidence on record. Witness Ratansing Baria in his deposition has clearly

stated that on the day of incident, he and his deceased brother were talking about mending of roofing tiles which was objected to by their father and he was pulled by his father as a result of which he had fallen down on the ground and his deceased brother had scolded his father for harassing the complainant who was infirm. The complainant has further maintained in his evidence before the Court that thereupon the appellant had come and started quarreling with the deceased but those who were residing nearby had collected there and persuaded the deceased as well as the appellant not to quarrel. This witness has maintained before the Court that thereafter the deceased had gone towards the village pond and the appellant had followed him with spear. The witness has categorically stated before the Court that the appellant had given a spear blow near private part of the body of the deceased and deceased had tried to run away to save himself from further injury at the hands of the appellant. The witness testified before the Court that as he was infirm and was not able to walk, he could not do anything in the matter, but learnt about the death of the deceased only in the next morning when Bharatsing Abhesing informed him that deceased was lying dead in his irrigated land. The witness has stated that thereupon he had gone to the place where the deceased was lying and had called police Patel at the place and had registered First Information Report with Sahera Police Station. The witness has been cross examined at length by the learned counsel for the defence, but, nothing could be elicited during the cross examination of this witness so as to destroy his claim made in the examination-in-chief. The witness stands fully corroborated by contemporary document, namely, the complaint lodged by him at Sahera Police Station. The contention that delay in lodging the complaint is not explained by the prosecution and therefore prosecution case should be disbelieved, is devoid of merits. As stated by the complainant, he had learnt about the death of the deceased only in the morning when information was conveyed to him by witness Bharatsing. He has clearly maintained before the Court that because of ailment of T.B. he had become infirm and weak and was not able to walk at all. Under the circumstances his conduct of not looking for the deceased during night hours can very well be understood. After learning about the death of the deceased this infirm witness had gone to the place of incident and had called the police Patel of the village at the spot and thereafter had gone to Sahera Police Station for the purpose of lodging complaint. On overall view of the matter we are of the opinion that there is no delay in lodging complaint and the prosecution case cannot be

thrown over board on the ground that the so called delay in lodging the complaint is not explained by the prosecution. Further we find that the evidence of complainant Ratansing also stands corroborated by map of place of incident as well as medical evidence. The medical evidence on record which is in the form of deposition of Dr.S.B.Shah and postmortem notes prepared by him, would indicate that the deceased had sustained injury to femoral artery of left side and this part of evidence of Dr.Shah corroborates the say of this witness that the appellant had given spear blow near private part of body of the deceased. Dr.Shah was shown article No.10 which was spear discovered at the instance of the appellant and the Doctor opined that injury on the deceased was possible by the said spear. In our view, this also corroborates the evidence of the complainant. Having regard to the totality of the facts and circumstances of the case, we are of the opinion, that the learned Judge did not commit any error in placing reliance on the sole testimony of complainant Ratansing for the purpose of coming to the conclusion that the appellant had caused injury near the private part of the body of the deceased on the date of incident and that the said injury proved to be fatal.

7. The evidence of panch witness Kanakbhai Bapulal as P.W.4 at Exh.16 establishes that this witness was summoned at Sahera Police Station and in his presence the appellant had shown willingness to show the place where he had hidden the spear and the clothes put on by him at the time of incident. According to this witness first part of the panchnama was prepared at the Police Station and thereafter in the company of the appellant and another panch witness Amarsing as well as Police Officers, he had gone to the place where a stack of grass was pointed out by the appellant and the appellant had taken out from the hay, clothes which were put on by him as well as spear. The witness has maintained before the Court that the banian and the spear discovered at the instance of the appellant were found to be blood stained. This witness was cross examined by the defence but nothing could be elicited so as to doubt the version given by him in his examination-in-chief. The witness is completely corroborated by contemporary document namely panchnama produced on the record of case at Exh.17. The evidence of this witness is also corroborated by testimony of investigating officer Rameshchandra Keshavlal. The prosecution evidence further shows that the articles which were discovered at the instance of the appellant were seized and sent for analysis. The report of the serologist produced on the record of the case at

Exh.14 indicates that the spear and the banian of the appellant had the same blood group i.e. 'B' blood group which was the blood group of the deceased. The discovery of the blood of same group on the weapon of offence and on banian of the appellant as that of the deceased, indicates that the appellant was in close proximity of the deceased when he was fatally wounded and that the appellant had every opportunity of committing crime in question. Thus this circumstantial evidence also strengthens the case of the prosecution that the appellant had committed murder of the deceased. Thus the finding recorded by the learned Judge that the appellant had caused injury to the deceased by means of a spear being eminently just is hereby upheld.

8. The alternative contention that the appellant had inflicted only one blow, and therefore, it should be held that the case is governed by Part-II of Section 304 or at the best by Part-I of Section 304 of the Indian Penal Code and the sentence imposed should be suitably reduced has no substance. The evidence of complainant Ratansing would indicate that the appellant had followed the deceased with a spear which is a deadly weapon. According to the complainant the appellant had inflicted blow with spear on vital part of the body of the deceased. It is not the case of the appellant that he had intended injury on other part of the body of the deceased but the injury had accidently fallen on another part of the body. It is also not the case of the appellant that blow was aimed on some other part of the body and because of supervening cause like sudden intervention or movement of the deceased, the spear struck near the private part of the body of the deceased. The record of the case indicate that the deceased was unarmed. The medical evidence on record shows that injury on vital part of the body sustained by the deceased was sufficient in the ordinary course of nature to cause his death and that the deceased must have died within 7 to 8 minutes of receipt of injury. Under the circumstances we are of the opinion that the offence committed by the appellant is that of murder and not one either under Part-I or Part-II of Section 304 of Indian Penal Code.

9. The net result of the above discussion is that the prosecution has proved beyond reasonable doubt that the appellant had committed murder of his deceased brother and there is no merits in the appeal. The appeal is therefore liable to be dismissed.

10. For the foregoing reasons the appeal fails and is

dismissed. Mudammal articles to be disposed of in terms of direction given in the impugned judgment.

(J.M. Panchal, J).

(D.P. Buch, J).

/phalguni/